

NO. F-69010

sentencing, and the Defendant's potential for rehabilitation or treatment. Based upon these considerations, the Court finds as follows:

I. RANGE OF SENTENCE

Pursuant to T.C.A. § 40-35-108, the Defendant is found, beyond a reasonable doubt, to be a *Career Offender*, as two of the Conviction Offenses are Class D felonies, and he has at least six prior felony convictions. Further, the Defendant stipulated to his status as a Career Offender.

II. ENHANCEMENT FACTORS (T.C.A. § 40-35-114)

Since the Defendant is a Career Offender, the consideration of enhancement factors is irrelevant, because by statute, the Defendant "shall receive the maximum sentence within the applicable Range III." T.C.A. § 40-35-108(c). *See State v. Lee*, 2000 WL 1478570 (Tenn. Crim. App. 2000).

III. MITIGATING FACTORS (T.C.A. § 40-35-113)

Since the Defendant is a Career Offender, the consideration of mitigating factors is irrelevant, because by statute, the Defendant "shall receive the maximum sentence within the applicable Range III." T.C.A. § 40-35-108(c). *See State v. Lee*, 2000 WL 1478570 (Tenn. Crim. App. 2000).

IV. FINDINGS REGARDING CONSECUTIVE SENTENCING

Pursuant to T.C.A. § 40-35-115, the Court finds, by a preponderance of the evidence, that:

- ☐ Defendant is a professional criminal who has knowingly devoted his or her life to criminal acts as a major source of livelihood;
- ☒ Defendant is an offender whose record of criminal activity is extensive;
- ☐ Defendant is a dangerous mentally abnormal person so declared by a competent psychiatrist who concludes as a result of an investigation prior to sentencing that the defendant's criminal conduct has been characterized by a pattern of repetitive or compulsive behavior with heedless indifference to consequences;
- ☐ Defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high, and all three of the following factors apply:
 - ☐ (a) the circumstances surrounding the commission of the offense are aggravated, and
 - ☐ (b) confinement for an extended period of time is necessary to protect society from the defendant's unwillingness to lead a productive life and the defendant's resort to criminal activity in furtherance of an anti-societal lifestyle, and

☐ (c) the aggregate length of the sentences reasonably relates to the offense of which the defendant stands convicted.

☐ Defendant is convicted of two (2) or more statutory offenses involving sexual abuse of a minor with consideration of the aggravating circumstances arising from the relationship between the defendant and victim or victims, the time span of the defendant's undetected sexual activity, the nature and scope of the sexual acts and the extent of the residual, physical, and mental damage to the victim or victim;

☒ Defendant is sentenced for an offense committed while on probation; or

☐ Defendant is sentenced for criminal contempt.

☒ Defendant has additional sentences not yet fully served (Tenn. R. Crim. P. 32(c)(2)).

V. PROBATION CONSIDERATIONS

As a Career Offender, the Defendant "shall receive the maximum sentence within the applicable Range III." T.C.A. § 40-35-108(c). Accordingly, the Defendant must be sentenced to twelve (12) years for each Class D felony, and is not a favorable candidate for alternative sentencing. T.C.A. § 40-35-102(6).

VI. SENTENCE

Although consecutive sentencing could be ordered in this case due to the presence of the two factors noted in Section IV, *supra*, the Court finds that concurrent sentencing is more appropriate in this case due to the fact that the Defendant's convictions all stemmed from the singular criminal activity of possessing illegal drugs on his property. Moreover, the Court notes that the Defendant was found guilty of violating his probation in Case Nos. 57670, 57700, 57834, 57917, 58954, & 64196 in connection with the charges in those cases, and was ordered to serve 25 years at 45% consecutive to 12 years at 60% in those cases.

Therefore, the Defendant is hereby sentenced to a term of twelve (12) years in the Department of Correction for the conviction of Possession of a Schedule III Controlled Substance with Intent to Manufacture, Deliver, or Sell (Count 2). Additionally, the Defendant is sentenced to a term of twelve (12) years -- concurrent to Count 2 -- in the Department of Correction for the conviction of Maintaining a Dwelling for the Use or Sale of Controlled Substances (Count 3). Additionally, the Defendant is sentenced to a term of eleven (11) months and 29 days -- concurrent to Count 2 -- for the conviction of Simple Possession of a Schedule II Controlled Substance (Count 1). Additionally, the

Defendant is sentenced to a term of eleven (11) months and 29 days -- concurrent to Count 2 -- for the conviction of Possession of Drug Paraphernalia (Count 4).

The Defendant's sentence in this case will be served consecutively to his violation of probation sentence in Case Nos. 57670, 57700, 57834, 57917, 58954, & 64196. To order otherwise would depreciate the seriousness of violating probation, particularly in a case such as this one, where the Defendant has an extensive record of criminal activity and has been given every opportunity for rehabilitation. In short, the Defendant "has received ample largesse from the law and has been unable to cease his criminal behavior." State v. Forrester, 1992 WL 52701 (Tenn. Crim. App. 1992). Finally, the Court is troubled by the Defendant's lack of accountability for his actions, as evidenced by his statements contained in the pre-sentence report.

VII. FINE

The Defendant is hereby fined \$250.00 for each count, for a total fine of \$1,000.00.

IT IS SO ORDERED.

/s/ [Original Signature on File at Clerk's Office]

M. KEITH SISKIN

CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing Order has been mailed (to last address on file), postage prepaid, to the following:

Jennings Jones, Esq.
Assistant District Attorney General
320 West Main Street, Suite 100
Murfreesboro, TN 37130

Joe Brandon, Esq.
Attorney for Defendant
119 North Maple Street
Murfreesboro, TN 37130

This the _____ day of _____, 20____.

Deputy Clerk